

# MICPEL – 2009

## Hot Topics in Elder Law

## Estates & Trusts Update

Frederick R. Franke, Jr.  
Law Office of Frederick R. Franke, Jr.  
77 Franklin Street  
Annapolis, Maryland 21401  
(410) 263-4876  
(410) 289-5882  
[www.fredfranke.com](http://www.fredfranke.com)  
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# BIOGRAPHICAL INFORMATION

Attorney  
Frederick R. Franke, Jr.  
Law Office of Frederick R. Franke, Jr.  
77 Franklin Street  
Annapolis, Maryland 21401  
410-263-4876  
www.fredfranke.com

## PRACTICE AREAS:

Estate Planning • Asset Protection Planning • Estate/Trust Administration  
Fiduciary Litigation • Expert Witness & Consulting Services

Mr. Franke received his A.B. from Kenyon College in 1969; his J.D. from Washington and Lee University in 1973; his L.L.M. (Taxation) from George Washington University in 1983. He was admitted to the Maryland Bar in 1974 and has practiced in Annapolis since 1976.

Mr. Franke is past-chair of the Council of the Estates and Trusts Law Section of the Maryland Bar Association. He is a Fellow of the American College of Trust and Estate Counsel and an Adjunct Professor of Law at the University of Baltimore, School of Law. He is included in The Best Lawyers in America (Trusts and Estates) and listed in the Maryland Super Lawyers (Estate Planning and Probate). He is a member of various local and national bar associations.

He has published articles on tax and other topics related to his professional interests, including: *"Asset Protection and Tenancy by the Entirety,"* ACTEC Journal, Spring 2009; *"Perfect Ambiguity: The Role of the Attorney in Maryland Guardianships,"* Maryland Journal of Contemporary Legal Issues, 1996.

Mr. Franke also has participated, as a lecturer, in various continuing education programs for lawyers, including: *"Asset Protection – A Guide for Maryland Estate and Trust Lawyers,"* (MICPEL Advance Estate Planning Institute 2006); *"Revocable Inter Vivos Trusts,"* (MICPEL 2004 and 2006); *"Valuation Discounting,"* (MICPEL 2003; MSBA 2002 and 2003); *"Business Valuation,"* (MICPEL 1998); *"Family Partnerships,"* (MICPEL 1996); *"Avoiding Probate - Will Substitutes,"* 1996; *"Basic Estate Planning,"* (MICPEL 1993); *"A Match Made In Heaven – Using Tenancy by the Entirety for Creditor Protection Without Sacrificing Estate Planning,"* (MSBA 2009).

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## **Back to the Future: Schoukroun and the Spousal Election. ©**

Maryland provides, by statute, that a surviving spouse may elect to receive a percentage of the net estate of the deceased spouse instead of what is provided by Will:

§ 3-203. Right to elective share.

(a) *General.* Instead of property left to him by will, the surviving spouse may elect to take a one-third share of the net estate if there is also a surviving issue, or one-half share of the net estate if there is no surviving issue.

(b) *Limitation.* The surviving spouse who makes this election may not take more than a one-half share of the net estate.

(c) *Calculation of net estate.* For the purposes of this section, the net estate shall be calculated without a deduction for the tax as defined in § 7-308 of the Tax-General Article. (An. Code 1957, art. 93, § 3-203; 1974, ch. 11, § 2; 1978, ch. 111; 1992, ch. 346; 2003, ch. 234.)<sup>1</sup>

As is clear from the statute, net estate means that estate passing by testate succession or, in other words, the net probate estate. Herein lies the conceptual problem with the elective share statute. Increasingly, a person's wealth consists of non-probate assets: retirement plans, revocable trusts, annuities. Thus, the relationship between one's wealth and probate assets may be somewhat haphazard.<sup>2</sup>

This shift in the nature of property ownership caused many states to adopt an "augmented estate" approach by applying the election against probate and non-probate property.<sup>3</sup>

The mechanism in Maryland for expanding the elective share right to non-probate property traditionally relied on suits based on the so-called "fraud upon the marital rights." Indeed, existing

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<sup>1</sup> Md. Code Ann. (2001 Repl. Vol., 2008 Cum. Supp.) Estates and Trusts Article § 3-203 (hereafter Est. & Trusts § \_\_\_\_.)

<sup>2</sup> John H. Langbein, "The Non-Probate Revolution and the Future of the Law of Succession", 97 Harv. L. Rev. 1108 (1984).

<sup>3</sup> Angela M. Vallario, "Spousal Election: Suggested Equitable Reform for the Division of Property at Death", 52 Cath. U. L. Rev. 519 (2003).

Est. & Trusts § 3-203 was a rejection of an augmented estate approach and an affirmation of this case-by-case method:

In recent years, with the increasing use of various estates and interests created during lifetime, life insurance, etc., a great portion of the property owned by married persons does not become part of the "estate" of the spouse first dying. This has the result – frequently unintended – of allowing the surviving spouse a disproportionately large share of the decedent's total property, while at other times the share of the spouse is actually less than that contemplated by the statute.

The Boulder Draft of the Uniform Probate Code attempts to resolve this problem as to the share of the surviving spouse by giving the spouse of a testate or intestate decedent an elective share of a "net augmented estate." Under this proposal, the property in which the surviving spouse would have an interest would include, in addition to the probate estate, transfers incident to death, transfers with retained control or survivorship, and other gratuitous transfers, as well as life insurance proceeds, annuities, pensions and community property. See 2-202 (UPC).

The Commission felt that the question of whether an estate should be augmented by inclusion of property, other than that being administered upon, for purposes of *increasing* the interest of the surviving spouse could be satisfactorily handled in accordance with the existing law relating to fraud upon marital rights. See, *e.g.*, Sykes, "Inter Vivos Transfers in Violation of the Rights of Surviving Spouses," 10 Md. L. Rev. 1 (1949); Sykes, §§ 183 and 184.<sup>4</sup>

Until 1990, the case law approach employed an examination of whether a non-probate disposition was a fraud on the marital right to election based on a facts and circumstances test:

In Maryland, the completeness of the transfer and the extent of control retained by the transferor, the motive of the transferor, participation by the transferee in the alleged fraud and the degree to which the surviving spouse is stripped of his or her interest in the estate of the decedent have all been considered material, and no one test has been adopted to the exclusion of all other tests. As pointed out by Mr. Sykes in his article above referred to, there are several other factors which have been or may be considered as pertinent, such as the relative moral claims of the surviving spouse and of the

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<sup>4</sup> Governor's Commission to Review and Revise the Testamentary Law of Maryland, Article 93 Decedent's Estate (1968) (hereafter "Henderson Commission Report") Cmt. 3-102.

transferees, other provisions for the surviving spouse, whether or not he or she has independent means and the interval of time between the transfer and the death of the transferor.

\* \* \*

No general and completely satisfactory rule to determine the validity or invalidity of transfers alleged to be in fraud of marital rights has yet been evolved in this State. The test of degree has been recognized, and so have its shortcomings. It remains a very practical consideration among the facts and circumstances to be considered in connection with the completeness and genuineness of a transfer where the transferor, by naming himself as trustee and as a beneficiary, or by means of an agreement with his donees, has retained some control over the subject of the gift or trust under scrutiny. In the light of the family relationships of the parties involved in this case, in the absence of any fraud or undue influence practiced by the decedent's sons and in view of the amount and proportion of the property formerly owned by the decedent which the widow will receive, we do not find any basis upon which the trusts created in these savings accounts should be stricken down.<sup>5</sup>

In Knell v. Price, 318 Md. 501, 569 A.2d 636 (1990), the Court of Appeals seemed to change the approach of weighing various factors in favor of a bright-line test. Knell "had a cast of three: William A. Knell – the husband, Violet E. Knell – his wife, and Jesse Annabelle Price – the 'other woman'.<sup>6</sup>" The Knells lived together as husband and wife for 22 years at which point they separated due to marital difficulties. The Knells remained separated and living apart for the following 27 years although no formal separation agreement was executed nor was a divorce action ever filed. Mrs. Knell continued to live in the marital home that the couple had purchased together during the marriage; Mr. Knell began living with Ms. Price a year after the separation and continued to live with her until Mr. Knell's death. Sometime during the period when Mr. Knell and Ms. Price were together, Mr. Knell purchased another house with the title in his name. After acquiring the property, Mr. Knell conveyed the property to a straw man who immediately re-conveyed the

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<sup>5</sup> Whittington v. Whittington, 205 Md. 1, Cmt. 12-13 (1954).

<sup>6</sup> 318 Md. at 502.

property to Mr. Knell as life tenant with full powers and the remainder to Ms. Price. After Mr. Knell's death, his estranged wife elected against the will (which, presumably, left her nothing) and sought to have the spousal election apply to the property. The trial Court and the Court of Special Appeals applied the Whittington test and found that no fraud had been committed. The Court of Appeals, however, reversed the decision of the lower courts and held that the elective share extended over non-probate property when a decedent retained substantial control over that property during his or her lifetime.

Knell v. Price seemed to established a per se rule when dominion and control is retained over property by the decedent:

"But here, it is perfectly clear that Mr. Knell retained control of the property during his lifetime by establishing a life estate in himself with unfettered power in him, while living (except by will), to dispose of all interests in the property fee simple. He did not part with the absolute dominion of the property during his life. His conveyance, through a straw man, of the remainder of the property was not complete, absolute, and unconditional. The law pronounces this to be a fraud on the marital rights of Mrs. Knell. His reluctance to relinquish control over the disposition of the property during his lifetime defeated his intention."<sup>7</sup>

Knell is consistent with decisions rendered by other jurisdictions in interpreting elective share statutes. This trend may reflect the practice of avoiding probate through use of jointly-held accounts, revocable trusts, or similar devices which has made obsolete the use of the probate estate as the sole measurement. Seifert v. So. Nat'l Bank, 305 S.C. 353, 409 S.E.2d 337 (1991), held that in giving a spouse an elective share right the legislature did not intend to limit this right to the probate estate when a decedent exercised power over that property:

"Surely, then, it was not the legislature's intent to allow this substantial right (to the elective share) to be circumvented as respondents urge. Thus, we hold that, where a spouse seeks to avoid payment of the elective share by creating a trust over which he or she

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<sup>7</sup> *Id.* at 512.

exercises substantial control, the trust may be declared invalid as illusory, and the trust assets may be included in the decedent's estate for the calculation of the elective share."

Id.; see also Newman v. Dore, 275 N.Y. 371, 9 N.E.2d. 966 (1937); Staples v. King, 433 A.2d 407, 409-10 (Me. 1981) ("However, where the married person purports to transfer property out of his estate but in fact retains substantial control over the property for his lifetime, such a transfer will not be effective against claims of the surviving spouse...").

Similarly, in Sullivan v. Burkin, 390 Mass. 864, 460 N.E.2d. 571 (1984), the Massachusetts Supreme Court used non-probate assets to establish a baseline in calculating the elective share when control of the asset was retained by the deceased spouse. The court held that it was proper to extend the elective share beyond the probate estate because of the significant changes happening in the law:

"The interests of one spouse in the property of the other have been substantially increased upon the dissolution of the marriage by divorce. We believe that, when a marriage is terminated by the death of one spouse, the rights of the surviving spouse should not to be so restricted as they are by the rule in Kerwin v. Donaghy. It is neither equitable nor logical to extend to a divorced spouse greater rights in the assets of an *inter vivos* trust created and controlled by the other spouse than are extended to a spouse who remains married until the death of his or her spouse."

Id. at 577.

In Schoukroun v. Karsenty, 177 Md. App. 615 (2007), the Court of Special Appeals extended the principle of Knell v. Price to a revocable trust and pay on death accounts. Because the *inter vivos* transfers are not "complete, absolute, and unconditional," the transfers are *per se* funds on the spousal election. Schoukroun has been granted certiorari at 404 Md. 152 (2008).

The Court of Appeals reversed, effectively returning to a pre-Knell approach.<sup>8</sup>

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<sup>8</sup> Karsenty v. Schoukroun, 406 Md. 469, 959 A.2d 11476 (2008).

Interestingly, however, Knell itself was left standing (although one wonders how.) Schoukroun invites one to look at various elements to determine whether the elective share extends to non-probate transfers:

To summarize, when a surviving spouse seeks to invalidate the non-probate disposition of an asset, a scrutinizing court must focus on the nature of the underlying *inter vivos* transfer. If it was "complete and bona fide" or done in "good faith" (both phrases meaning the same thing in this context), the court must respect the estate planning arrangements of the decedent and may not invalidate the transaction; however if it was "a mere device or contrivance," "a mere fiction," "a sham," or "colorable" (each also sharing the same meaning in this context), the court shall invalidate the underlying transaction as to the surviving spouse... In order to answer this question, a court must consider whether the decedent truly intended that the *inter vivos* transfer divest her or him of ownership in form, but not in substance. Stated in more practical language, the question for a court to decide is whether the decedent intended that the transfer change nothing, except how the property is directed at the decedent's death. Notwithstanding our previous references to "fraud" on marital rights, because we ultimately are not concerned with whether a decedent intended to deprive her or his surviving spouse of property, we emphasize today that it is more helpful for a court to think of a sham transfer in this context as an unlawful frustration of the surviving spouse's statutory share.

\* \* \*

First, as a threshold matter, a surviving spouse must show that the decedent retained an interest in or otherwise continued to enjoy the transferred property. In Mushaw, we said that "where [a decedent] does not part with dominion over the property transferred, the issue of good faith is immediately raised."

\* \* \*

Second, as a guiding principle, courts should not employ their equity powers to second-guess reasonable and legitimate estate planning arrangements. Cf. Winters, 254 Md. at 585, 255 A.2d at 27 (noting that the decedent's decision to provide for his grandchildren and great-grandchildren was "not only understandable but legitimate"); Whitehill v. Thiess, 161 Md. 657, 661, 158 A. 347, 348 (1932) (noting that, under the circumstances, decedent's decision to leave everything to her children despite her surviving husband was "reasonable and just");

Brown, 126 Md. at 180, 94 A. at 524 (stressing the "reasonable character" of the decedent's trust). For this reason, we think that a surviving spouse has a high hurdle to overcome.

Third, our case-law offers considerable guidance with respect to what factors are relevant to determining, in this context, whether a decedent intended that an *inter vivos* transfer be a sham. For the guidance of the trial court (and posterity), we will chronicle and elucidate those factors that we consider most relevant, beginning with the factors that we approved expressly in Whittington.

\* \* \*

The extent of the control retained by the decedent probably is the most useful indicator when scrutinizing an *inter vivos* transfer.

\* \* \*

A decedent's motives are also cogent to consider. Whittington, 205 Md. at 12, 106 A.2d at 77. In an early case, Collins v. Collins, we invalidated a deceased husband's *inter vivos* transfer of all of his real and personal property, on the eve of his second marriage, to his children from a prior marriage. 98 Md. 473, 474, 57 A. 597, 597 (1904). There, the decedent's motives revealed themselves in the fact that he led his surviving wife to believe that he continued to own the property outright and that she would receive a share of it when he died.

\* \* \*

In other cases, however, we have relied on evidence of the decedent's motives as an indicator that the assailed *inter vivos* transfer actually was intended to be complete and bona fide. As we already explained, in Gianakos, we considered the trial court's finding that the decedent wanted to retain control over his restaurant property so that he could keep his son, to whom he transferred the remainder, "active in the business."

\* \* \*

Part and parcel to assessing the motives of the decedent is consideration of the transferee's motives as well. See Whittington, 205 Md. at 12, 106 A.2d at 77. This requires that a court consider what were the true terms of the transfer. We could envision a scenario in which the decedent gave her or his property to someone, subject to a mutual understanding that the decedent remain the real

owner. Unfortunately, there is a dearth of precedent on this point. Hays, however, provides some insight.

\* \* \*

Whittington also provides some insight about how a transferee's actions may bear on the validity of a decedent's *inter vivos* transfer. We noted there the absence of "fraud on the part of the donees shown as to their father [the decedent] or their step-mother." Whittington, 205 Md. at 13, 106 A.2d at 78. In other words, a court should consider not only whether there was collusion between the decedent and the beneficiary, but also whether the beneficiary intended to defraud the decedent or the surviving spouse.

\* \* \*

The degree to which an *inter vivos* transfer deprives a surviving spouse of property that she or he would otherwise take as part of the decedent's estate is also extremely significant.

\* \* \*

Looking at the degree to which an assailed *inter vivos* transfer depleted the value of property available to a surviving spouse necessarily requires a court to consider also non-probate arrangements that the decedent made for the surviving spouse.

\* \* \*

Another factor that commands weight is whether the decedent actually exercised the retained control or otherwise enjoyed the property at issue, and, if so, to what extent. Simply put, use of the property suggests that the decedent did not intend really to part with ownership; conversely, failure to exercise retained powers may suggest that the decedent intended to alienate the property.

\* \* \*

A final factor that courts should pay particular attention to is the familial relationship between the decedent and the person or persons who benefit by the challenged *inter vivos* transfer.

It would appear that we have returned to Whittington with a vengeance!

One question not addressed is whether the transfer is actually reversed (thus bringing the property into the probate estate for the benefit of creditors) or whether it is simply a reversal for the benefit of the spouse.

Schoukroun presents planning opportunities. If a client wishes to by-pass the spouse (and does not want, or cannot get, a marital agreement) the use of a revocable trust becomes important. It is important, of course, to establish a permissible intent as in Schoukroun.

## CHAPTER 132

(House Bill 149)

AN ACT concerning

### **Estates and Trusts – Trust for Care of Animal**

FOR the purpose of establishing that the common-law rule against perpetuities does not apply to a certain trust created for the care of an animal alive during the lifetime of the settlor; authorizing the creation of a trust to provide for the care of an animal alive during the lifetime of the settlor; establishing when a certain trust terminates; authorizing a certain person to enforce a certain trust; authorizing a person having an interest in the welfare of an animal the care for which a trust is established to make certain requests to a court; establishing that the property of a certain trust may be applied only to the intended use of the trust, except to the extent the court may make a certain determination; requiring that property not required for the intended use of a certain trust be distributed in a certain manner; providing for the application of this Act; and generally relating to trusts for the care of animals.

BY repealing and reenacting, with amendments,  
Article – Estates and Trusts  
Section 11–102  
Annotated Code of Maryland  
(2001 Replacement Volume and 2008 Supplement)

BY adding to  
Article – Estates and Trusts  
Section 14–112  
Annotated Code of Maryland  
(2001 Replacement Volume and 2008 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

### **Article – Estates and Trusts**

11–102.

(a) In this section, “usufructuary” means a person having a usufruct or right to enjoy a thing in which the person has no property interest.

(b) Subject to §§ 4–409 of this article and 11–103 of this subtitle, the common-law rule against perpetuities as now recognized in the State is preserved, but the rule does not apply to the following:

(1) A legacy or inter vivos conveyance having a value of \$5,000 or less, or of any burial lot of any value, in trust or otherwise, for the purpose of providing for the perpetual care or keeping in good order and condition, or making repairs to, any lot, vault, mausoleum, or other place of sepulture belonging to any individual or several individuals in any cemetery or graveyard, the lots in which are intended for the burial of members of the family, family connections, relatives, or friends of the owners, or their successors in ownership;

(2) A legacy or inter vivos conveyance intended to transfer assets from any corporation incorporated for charitable objects, to any other charitable corporation on a contingency or future event;

(3) A trust created by an employer as part of a pension, stock bonus, disability, death benefit, profit-sharing, retirement, welfare, or other plan for the exclusive benefit of some or all of the employees of the employer or their beneficiaries, to which contributions are made by the employer or employees, or both the employer and employees, for the purpose of making distributions to or for the benefit of employees or their beneficiaries out of the income or principal or both the income and principal of the trust, or for any other purposes set out in the plan;

(4) A trust for charitable purposes, which shall include all purposes as are within the spirit or letter of the statute of 43 Elizabeth Ch. 4 (1601), commonly known as the statute of charitable uses;

(5) A trust in which the governing instrument states that the rule against perpetuities does not apply to the trust and under which the trustee, or other person to whom the power is properly granted or delegated, has the power under the governing instrument, applicable statute, or common law to sell, lease, or mortgage property for any period of time beyond the period that is required for an interest created under the governing instrument to vest, so as to be good under the rule against perpetuities;

(6) An option of a tenant to renew a lease;

(7) An option of a tenant to purchase all or part of the premises leased by the tenant;

(8) An option of a usufructuary to extend the scope of an easement or profit;

(9) The right of a county, a municipality, a person from whom land is acquired, or the successor-in-interest of a person from whom land is acquired, to acquire land from the State in accordance with § 8-309 of the Transportation Article;

(10) A right or privilege, including an option, warrant, pre-emptive right, right of first refusal, right of first option, right of first negotiation, call right, exchange right, or conversion right, to acquire an interest in a domestic or foreign joint venture, partnership, limited liability partnership, limited partnership, limited liability limited partnership, corporation, cooperative, limited liability company, business trust, or similar enterprise, whether the interest is characterized as a joint venture interest, partnership interest, limited partnership interest, membership interest, security, stock, or otherwise; [or]

(11) A nondonative property interest as described in § 11-102.1 of this subtitle; OR

**(12) A TRUST CREATED UNDER § 14-112 OF THIS ARTICLE TO PROVIDE FOR THE CARE OF AN ANIMAL ALIVE DURING THE LIFETIME OF THE SETTLOR.**

**14-112.**

**(A) A TRUST MAY BE CREATED TO PROVIDE FOR THE CARE OF AN ANIMAL ALIVE DURING THE LIFETIME OF THE SETTLOR.**

**(B) A TRUST AUTHORIZED BY THIS SECTION TERMINATES:**

**(1) IF CREATED TO PROVIDE FOR THE CARE OF ONE ANIMAL ALIVE DURING THE LIFETIME OF THE SETTLOR, ON THE DEATH OF THE ANIMAL; OR**

**(2) IF CREATED TO PROVIDE FOR THE CARE OF MORE THAN ONE ANIMAL ALIVE DURING THE LIFETIME OF THE SETTLOR, ON THE DEATH OF THE LAST SURVIVING ANIMAL.**

**(C) (1) A TRUST AUTHORIZED BY THIS SECTION MAY BE ENFORCED BY A PERSON APPOINTED UNDER THE TERMS OF THE TRUST OR, IF NO PERSON IS APPOINTED, BY A PERSON APPOINTED BY THE COURT.**

**(2) A PERSON HAVING AN INTEREST IN THE WELFARE OF AN ANIMAL THE CARE FOR WHICH A TRUST IS ESTABLISHED MAY REQUEST THE COURT TO APPOINT A PERSON TO ENFORCE THE TRUST OR TO REMOVE A PERSON APPOINTED.**

(D) (1) EXCEPT TO THE EXTENT THAT THE COURT MAY DETERMINE THAT THE VALUE OF A TRUST AUTHORIZED BY THIS SECTION EXCEEDS THE AMOUNT REQUIRED FOR THE USE INTENDED BY THE TRUST, THE PROPERTY OF THE TRUST MAY BE APPLIED ONLY TO THE INTENDED USE OF THE TRUST.

(2) EXCEPT AS OTHERWISE PROVIDED UNDER THE TERMS OF THE TRUST, PROPERTY NOT REQUIRED FOR THE INTENDED USE OF THE TRUST SHALL BE DISTRIBUTED:

(I) TO THE SETTLOR, IF LIVING; OR

(II) IF THE SETTLOR IS DECEASED, TO THE SUCCESSORS IN INTEREST OF THE SETTLOR.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to a trust created before the effective date of this Act.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

**Approved by the Governor, April 14, 2009.**

## CHAPTER 134

(House Bill 200)

AN ACT concerning

### **Maryland Uniform Prudent Management of Institutional Funds Act**

FOR the purpose of repealing certain provisions of law relating to the management of institutional funds; establishing the Maryland Uniform Prudent Management of Institutional Funds Act; establishing a standard of conduct in managing and investing a certain institutional fund; authorizing a certain institution to appropriate for expenditure or accumulate so much of a certain endowment fund as the institution determines is prudent for certain purposes; establishing a certain presumption of imprudence; requiring notice of a certain appropriation by an institution to the Attorney General under certain circumstances; requiring the institution to consider certain factors in making a certain determination; providing certain rules of construction; providing for the delegation of certain management and investment functions; establishing how certain restrictions on the management, investment, or purpose of an institutional fund may be released or modified; requiring that compliance with this Act be determined in a certain manner; providing for the application of this Act; establishing that this Act modifies, limits, and supersedes certain provisions of federal law; defining certain terms; making this Act an emergency measure; and generally relating to the management of institutional funds.

BY repealing

Article – Estates and Trusts

Section 15–401 through 15–409

Annotated Code of Maryland

(2001 Replacement Volume and 2008 Supplement)

BY adding to

Article – Estates and Trusts

Section 15–401 through 15–410 to be under the amended subtitle “Subtitle 4.

Maryland Uniform Prudent Management of Institutional Funds Act”

Annotated Code of Maryland

(2001 Replacement Volume and 2008 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

#### **Article – Estates and Trusts**

#### **Subtitle 4. Maryland Uniform PRUDENT Management of Institutional Funds Act.**

[15-401.

(a) In this subtitle the following words or phrases have the meanings indicated.

(b) "Endowment fund" means an institutional fund, or any part of it not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(c) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document, including the terms of any institutional solicitations from which an institutional fund results, under which property is transferred to or held by an institution as an institutional fund.

(d) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(e) "Historic dollar value" means the aggregate fair value in dollars of (1) an endowment fund at the time it became an endowment fund, (2) each subsequent donation to the fund at the time it is made, and (3) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive.

(f) "Institutional" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(g) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes but does not include (1) a fund held for an institution by a trustee that is not an institution or (2) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.]

[15-402.

The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by § 15-406. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.]

[15-403.

Section 15-402 does not apply if the applicable gift instrument indicates the intention of the donor that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income", "interest", "dividends", or "rents, issues or profits", or "to preserve the principal intact", or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after the effective date of this act.]

[15-404.

In an addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, may:

(1) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any government or subdivision or instrumentality thereof;

(2) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and

(4) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trust, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.]

[15-405.

Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may (1) delegate to its committees, officers, or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds, (2) contract with independent investment advisors, investment counsel or managers, banks, or trust companies, so to

act, and (3) authorize the payment of compensation for investment advisory or management services.]

[15-406.

In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.]

[15-407.

(a) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(b) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the circuit court for the county where the office of the governing board is located, for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The Attorney General shall be notified of the application and given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(c) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(d) This section does not limit the application of the doctrine of cy pres.]

[15-408.

This subtitle shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this subtitle among those states which enact it.]

[15-409.

This subtitle may be cited as the “Maryland Uniform Management of Institutional Funds Act”.]

**15-401.**

**(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

**(B) “CHARITABLE PURPOSE” MEANS THE RELIEF OF POVERTY, THE ADVANCEMENT OF EDUCATION OR RELIGION, THE PROMOTION OF HEALTH, THE PROMOTION OF A GOVERNMENTAL PURPOSE, OR ANY OTHER PURPOSE THE ACHIEVEMENT OF WHICH IS BENEFICIAL TO THE COMMUNITY.**

**(C) (1) “ENDOWMENT FUND” MEANS AN INSTITUTIONAL FUND OR PART OF AN INSTITUTIONAL FUND THAT, UNDER THE TERMS OF A GIFT INSTRUMENT, IS NOT WHOLLY EXPENDABLE BY THE INSTITUTION ON A CURRENT BASIS.**

**(2) “ENDOWMENT FUND” DOES NOT INCLUDE ASSETS THAT AN INSTITUTION DESIGNATES AS AN ENDOWMENT FUND FOR THE USE OF THE INSTITUTION.**

**(D) “GIFT INSTRUMENT” MEANS A RECORD, INCLUDING AN INSTITUTIONAL SOLICITATION, UNDER WHICH PROPERTY IS GRANTED TO, TRANSFERRED TO, OR HELD BY AN INSTITUTION AS AN INSTITUTIONAL FUND.**

**(E) “INSTITUTION” MEANS:**

**(1) A PERSON, OTHER THAN AN INDIVIDUAL, ORGANIZED AND OPERATED EXCLUSIVELY FOR CHARITABLE PURPOSES;**

**(2) A GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, TO THE EXTENT THAT THE SUBDIVISION, AGENCY, OR INSTRUMENTALITY HOLDS FUNDS EXCLUSIVELY FOR A CHARITABLE PURPOSE; OR**

**(3) A TRUST THAT HAD BOTH CHARITABLE AND NONCHARITABLE INTERESTS, AFTER ALL NONCHARITABLE INTERESTS HAVE TERMINATED.**

**(F) (1) “INSTITUTIONAL FUND” MEANS A FUND HELD BY AN INSTITUTION EXCLUSIVELY FOR CHARITABLE PURPOSES.**

**(2) “INSTITUTIONAL FUND” DOES NOT INCLUDE:**

(I) **PROGRAM-RELATED ASSETS;**

(II) **A FUND HELD FOR AN INSTITUTION BY A TRUSTEE THAT IS NOT AN INSTITUTION; OR**

(III) **A FUND IN WHICH A BENEFICIARY THAT IS NOT AN INSTITUTION HAS AN INTEREST, OTHER THAN AN INTEREST THAT COULD ARISE ON VIOLATION OR FAILURE OF THE PURPOSES OF THE FUND.**

(G) **“PERSON” MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT VENTURE, PUBLIC CORPORATION, GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.**

(H) **“PROGRAM-RELATED ASSET” MEANS AN ASSET HELD BY AN INSTITUTION PRIMARILY TO ACCOMPLISH A CHARITABLE PURPOSE OF THE INSTITUTION AND NOT PRIMARILY FOR INVESTMENT.**

(I) **“RECORD” MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.**

**15-402.**

(A) **SUBJECT TO THE INTENT OF A DONOR EXPRESSED IN A GIFT INSTRUMENT, AN INSTITUTION, IN MANAGING AND INVESTING AN INSTITUTIONAL FUND, SHALL CONSIDER THE CHARITABLE PURPOSES OF THE INSTITUTION AND THE PURPOSES OF THE INSTITUTIONAL FUND.**

(B) **IN ADDITION TO COMPLYING WITH THE DUTY OF LOYALTY IMPOSED BY LAW OTHER THAN THIS SUBTITLE, EACH PERSON RESPONSIBLE FOR MANAGING AND INVESTING AN INSTITUTIONAL FUND SHALL MANAGE AND INVEST THE FUND ~~IN GOOD FAITH AND WITH THE CARE AN ORDINARILY PRUDENT PERSON IN A LIKE POSITION WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES~~ EXERCISING ORDINARY BUSINESS CARE AND PRUDENCE UNDER THE FACTS AND CIRCUMSTANCES PREVAILING AT THE TIME OF THE ACTION OR DECISION.**

(C) **IN MANAGING AND INVESTING AN INSTITUTIONAL FUND, AN INSTITUTION:**

**(1) MAY INCUR ONLY COSTS THAT ARE APPROPRIATE AND REASONABLE IN RELATION TO THE ASSETS, THE PURPOSES OF THE INSTITUTION, AND THE SKILLS AVAILABLE TO THE INSTITUTION; AND**

**(2) SHALL MAKE A REASONABLE EFFORT TO VERIFY FACTS RELEVANT TO THE MANAGEMENT AND INVESTMENT OF THE FUND.**

**(D) AN INSTITUTION MAY POOL TWO OR MORE INSTITUTIONAL FUNDS FOR PURPOSES OF MANAGEMENT AND INVESTMENT.**

**(E) (1) THE PROVISIONS OF THIS SUBSECTION APPLY EXCEPT AS OTHERWISE PROVIDED BY A GIFT INSTRUMENT.**

**(2) IN MANAGING AND INVESTING AN INSTITUTIONAL FUND, THE FOLLOWING FACTORS, IF RELEVANT, SHALL BE CONSIDERED:**

**(I) GENERAL ECONOMIC CONDITIONS;**

**(II) THE POSSIBLE EFFECT OF INFLATION OR DEFLATION;**

**(III) THE EXPECTED TAX CONSEQUENCES, IF ANY, OF INVESTMENT DECISIONS OR STRATEGIES;**

**(IV) THE ROLE THAT EACH INVESTMENT OR COURSE OF ACTION PLAYS WITHIN THE OVERALL INVESTMENT PORTFOLIO OF THE FUND;**

**(V) THE EXPECTED TOTAL RETURN FROM INCOME AND THE APPRECIATION OF INVESTMENTS;**

**(VI) OTHER RESOURCES OF THE INSTITUTION;**

**(VII) THE NEEDS OF THE INSTITUTION AND THE FUND TO MAKE DISTRIBUTIONS AND TO PRESERVE CAPITAL; AND**

**(VIII) THE SPECIAL RELATIONSHIP OR SPECIAL VALUE OF THE ASSET, IF ANY, TO THE CHARITABLE PURPOSES OF THE INSTITUTION.**

**(3) MANAGEMENT AND INVESTMENT DECISIONS ABOUT AN INDIVIDUAL ASSET SHALL BE MADE NOT IN ISOLATION BUT IN THE CONTEXT OF THE PORTFOLIO OF INVESTMENTS OF THE INSTITUTIONAL FUND AS A WHOLE AND AS A PART OF AN OVERALL INVESTMENT STRATEGY HAVING RISK AND RETURN OBJECTIVES REASONABLY SUITED TO THE FUND AND TO THE INSTITUTION.**

(4) EXCEPT AS OTHERWISE PROVIDED BY LAW OTHER THAN THIS SUBTITLE, AN INSTITUTION MAY INVEST IN ANY KIND OF PROPERTY OR TYPE OF INVESTMENT CONSISTENT WITH THIS SECTION.

(5) AN INSTITUTION SHALL DIVERSIFY THE INVESTMENTS OF AN INSTITUTIONAL FUND UNLESS THE INSTITUTION REASONABLY DETERMINES THAT, BECAUSE OF SPECIAL CIRCUMSTANCES, THE PURPOSES OF THE FUND ARE BETTER SERVED WITHOUT DIVERSIFICATION.

(6) WITHIN A REASONABLE TIME AFTER RECEIVING PROPERTY, AN INSTITUTION SHALL MAKE AND CARRY OUT DECISIONS CONCERNING THE RETENTION OR DISPOSITION OF THE PROPERTY OR TO REBALANCE A PORTFOLIO, IN ORDER TO BRING THE INSTITUTIONAL FUND INTO COMPLIANCE WITH THE PURPOSES, TERMS, AND DISTRIBUTION REQUIREMENTS OF THE INSTITUTION AS NECESSARY TO MEET OTHER CIRCUMSTANCES OF THE INSTITUTION AND THE REQUIREMENTS OF THIS SUBTITLE.

(7) A PERSON THAT HAS SPECIAL SKILLS OR EXPERTISE, OR IS SELECTED IN RELIANCE ON THE REPRESENTATION BY THE PERSON THAT THE PERSON HAS SPECIAL SKILLS OR EXPERTISE, HAS A DUTY TO USE THOSE SKILLS OR THAT EXPERTISE IN MANAGING AND INVESTING INSTITUTIONAL FUNDS.

**15-403.**

(A) (1) ~~AN~~ SUBJECT TO THE INTENT OF A DONOR EXPRESSED IN THE GIFT INSTRUMENT, AN INSTITUTION MAY APPROPRIATE FOR EXPENDITURE OR ACCUMULATE SO MUCH OF AN ENDOWMENT FUND AS THE INSTITUTION DETERMINES IS PRUDENT FOR THE USES, BENEFITS, PURPOSES, AND DURATION FOR WHICH THE ENDOWMENT FUND IS ESTABLISHED.

(2) UNLESS STATED OTHERWISE IN THE GIFT INSTRUMENT, THE ASSETS IN AN ENDOWMENT FUND ARE DONOR-RESTRICTED ASSETS UNTIL APPROPRIATED FOR EXPENDITURE BY THE INSTITUTION.

(3) IN MAKING A DETERMINATION TO APPROPRIATE FOR EXPENDITURE OR ACCUMULATE UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE INSTITUTION SHALL ~~ACT IN GOOD FAITH, WITH THE CARE THAT AN ORDINARILY PRUDENT PERSON IN A LIKE POSITION WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES~~ EXERCISE ORDINARY BUSINESS CARE AND PRUDENCE UNDER THE FACTS AND CIRCUMSTANCES PREVAILING AT THE TIME OF THE ACTION OR DECISION, AND SHALL CONSIDER, IF RELEVANT, THE FOLLOWING FACTORS:

(I) THE DURATION AND PRESERVATION OF THE ENDOWMENT FUND;

(II) THE PURPOSES OF THE INSTITUTION AND THE ENDOWMENT FUND;

(III) GENERAL ECONOMIC CONDITIONS;

(IV) THE POSSIBLE EFFECT OF INFLATION OR DEFLATION;

(V) THE EXPECTED TOTAL RETURN FROM INCOME AND THE APPRECIATION OF INVESTMENTS;

(VI) OTHER RESOURCES OF THE INSTITUTION; AND

(VII) THE INVESTMENT POLICY OF THE INSTITUTION.

(B) TO LIMIT THE AUTHORITY TO APPROPRIATE FOR EXPENDITURE OR ACCUMULATE UNDER SUBSECTION (A) OF THIS SECTION, A GIFT INSTRUMENT MUST SPECIFICALLY STATE THE LIMITATION.

(C) TERMS IN A GIFT INSTRUMENT DESIGNATING A GIFT AS AN ENDOWMENT, OR A DIRECTION OR AUTHORIZATION IN THE GIFT INSTRUMENT TO USE ONLY "INCOME", "INTEREST", "DIVIDENDS", OR "RENTS, ISSUES, OR PROFITS", OR "TO PRESERVE THE PRINCIPAL INTACT", OR WORDS OF SIMILAR IMPORT:

(1) CREATE AN ENDOWMENT FUND OF PERMANENT DURATION UNLESS OTHER LANGUAGE IN THE GIFT INSTRUMENT LIMITS THE DURATION OR PURPOSE OF THE FUND; AND

(2) DO NOT OTHERWISE LIMIT THE AUTHORITY TO APPROPRIATE FOR EXPENDITURE OR ACCUMULATE UNDER SUBSECTION (A) OF THIS SECTION.

(D) (1) IN THIS SUBSECTION, FAIR MARKET VALUE SHALL BE CALCULATED:

(I) IF AN ENDOWMENT FUND HAS EXISTED AT LEAST 3 YEARS, ON THE BASIS OF THE MARKET VALUE DETERMINED AT LEAST QUARTERLY AND AVERAGED OVER A PERIOD OF NOT LESS THAN 3 YEARS IMMEDIATELY PRECEDING THE YEAR IN WHICH THE APPROPRIATION FOR EXPENDITURE IS MADE; OR

**(II) IF AN ENDOWMENT FUND HAS EXISTED FOR FEWER THAN 3 YEARS, FOR THE PERIOD THE ENDOWMENT FUND HAS EXISTED.**

**(2) THE APPROPRIATION FOR EXPENDITURE IN ANY YEAR OF AN AMOUNT GREATER THAN 7 PERCENT OF THE FAIR MARKET VALUE OF AN ENDOWMENT FUND CREATES A REBUTTABLE PRESUMPTION OF IMPRUDENCE.**

**(3) THE INSTITUTION SHALL NOTIFY THE ATTORNEY GENERAL OF THE APPROPRIATION FOR EXPENDITURE IN ANY YEAR OF AN AMOUNT GREATER THAN 7 PERCENT OF THE FAIR MARKET VALUE OF AN ENDOWMENT FUND.**

**(4) THIS SUBSECTION DOES NOT:**

**(I) APPLY TO AN APPROPRIATION FOR EXPENDITURE PERMITTED UNDER LAW OTHER THAN THIS SUBTITLE OR BY THE GIFT INSTRUMENT; OR**

**(II) CREATE A PRESUMPTION OF PRUDENCE FOR AN APPROPRIATION FOR EXPENDITURE OF AN AMOUNT LESS THAN OR EQUAL TO 7 PERCENT OF THE FAIR MARKET VALUE OF THE ENDOWMENT FUND.**

**15-404.**

**(A) (1) SUBJECT TO ANY SPECIFIC LIMITATION SET FORTH IN A GIFT INSTRUMENT OR IN LAW OTHER THAN THIS SUBTITLE, AN INSTITUTION MAY DELEGATE TO AN EXTERNAL AGENT THE MANAGEMENT AND INVESTMENT OF AN INSTITUTIONAL FUND TO THE EXTENT THAT AN INSTITUTION COULD PRUDENTLY DELEGATE UNDER THE CIRCUMSTANCES.**

**(2) AN INSTITUTION SHALL ~~ACT IN GOOD FAITH, WITH THE CARE THAT AN ORDINARILY PRUDENT PERSON IN A LIKE POSITION WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES~~ EXERCISE ORDINARY BUSINESS CARE AND PRUDENCE UNDER THE FACTS AND CIRCUMSTANCES PREVAILING AT THE TIME OF THE ACTION OR DECISION, IN:**

**(I) SELECTING AN AGENT;**

**(II) ESTABLISHING THE SCOPE AND TERMS OF THE DELEGATION, CONSISTENT WITH THE PURPOSES OF THE INSTITUTION AND THE INSTITUTIONAL FUND; AND**

(III) PERIODICALLY REVIEWING THE ACTIONS OF THE AGENT IN ORDER TO MONITOR THE PERFORMANCE AND COMPLIANCE OF THE AGENT WITH THE SCOPE AND TERMS OF THE DELEGATION.

(B) IN PERFORMING A DELEGATED FUNCTION, AN AGENT OWES A DUTY TO THE INSTITUTION TO EXERCISE REASONABLE CARE TO COMPLY WITH THE SCOPE AND TERMS OF THE DELEGATION.

~~(C) AN INSTITUTION THAT COMPLIES WITH SUBSECTION (A) OF THIS SECTION IS NOT LIABLE FOR THE DECISIONS OR ACTIONS OF AN AGENT TO WHICH THE FUNCTION WAS DELEGATED.~~

(C) THE STANDARD ESTABLISHED BY § 15-402(B) OF THIS SUBTITLE IS NOT LIMITED OR EXTINGUISHED BY THE APPOINTMENT OF AN EXTERNAL AGENT.

(D) BY ACCEPTING DELEGATION OF A MANAGEMENT OR INVESTMENT FUNCTION FROM AN INSTITUTION THAT IS SUBJECT TO THE LAWS OF THE STATE, AN AGENT SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE IN ALL PROCEEDINGS ARISING FROM OR RELATED TO THE DELEGATION OR THE PERFORMANCE OF THE DELEGATED FUNCTION.

(E) AN INSTITUTION MAY DELEGATE MANAGEMENT AND INVESTMENT FUNCTIONS TO THE COMMITTEES, OFFICERS, OR EMPLOYEES OF THE INSTITUTION AS AUTHORIZED BY LAW OTHER THAN THIS SUBTITLE.

**15-405.**

(A) (1) IF THE DONOR CONSENTS IN A RECORD, AN INSTITUTION MAY RELEASE OR MODIFY, IN WHOLE OR IN PART, A RESTRICTION CONTAINED IN A GIFT INSTRUMENT ON THE MANAGEMENT, INVESTMENT, OR PURPOSE OF AN INSTITUTIONAL FUND.

(2) A RELEASE OR MODIFICATION MAY NOT ALLOW A FUND TO BE USED FOR A PURPOSE OTHER THAN A CHARITABLE PURPOSE OF THE INSTITUTION.

(B) (1) A IF WRITTEN CONSENT OF THE DONOR CANNOT BE OBTAINED BY REASON OF THE DEATH, DISABILITY, UNAVAILABILITY, OR IMPOSSIBILITY OF IDENTIFICATION OF THE DONOR, A COURT OF COMPETENT JURISDICTION, ON APPLICATION OF AN INSTITUTION, MAY MODIFY A RESTRICTION CONTAINED IN A GIFT INSTRUMENT REGARDING THE MANAGEMENT OR INVESTMENT OF AN INSTITUTIONAL FUND IF THE RESTRICTION HAS BECOME IMPRACTICABLE OR WASTEFUL, IF THE

~~RESTRICTION IMPAIRS THE MANAGEMENT OR INVESTMENT OF THE FUND OBSOLETE, INAPPROPRIATE, OR IMPRACTICABLE, OR IF, BECAUSE OF CIRCUMSTANCES NOT ANTICIPATED BY THE DONOR, A MODIFICATION OF A RESTRICTION WILL CLEARLY FURTHER THE PURPOSES OF THE FUND.~~

(2) (I) THE INSTITUTION SHALL NOTIFY THE ATTORNEY GENERAL OF THE INSTITUTION'S APPLICATION UNDER PARAGRAPH (1) OF THIS SUBSECTION, AND THE ATTORNEY GENERAL SHALL BE GIVEN AN OPPORTUNITY TO BE HEARD.

(II) TO THE EXTENT PRACTICABLE, ANY MODIFICATION MADE UNDER PARAGRAPH (1) OF THIS SUBSECTION MUST BE MADE IN ACCORDANCE WITH THE DONOR'S PROBABLE INTENTION.

(C) (1) IF A PARTICULAR CHARITABLE PURPOSE OR A RESTRICTION CONTAINED IN A GIFT INSTRUMENT ON THE USE OF AN INSTITUTIONAL FUND BECOMES UNLAWFUL, IMPRACTICABLE, ~~IMPOSSIBLE TO ACHIEVE, OR WASTEFUL~~ OR IMPOSSIBLE TO ACHIEVE AND WRITTEN CONSENT OF THE DONOR CANNOT BE OBTAINED BY REASON OF THE DEATH, DISABILITY, UNAVAILABILITY, OR IMPOSSIBILITY OF IDENTIFICATION OF THE DONOR, A COURT OF COMPETENT JURISDICTION, ON APPLICATION OF AN INSTITUTION, MAY MODIFY THE PURPOSE OF THE FUND OR THE RESTRICTION ON THE USE OF THE FUND ~~IN A MANNER CONSISTENT WITH THE CHARITABLE PURPOSES EXPRESSED IN THE GIFT INSTRUMENT~~ IF THE DONOR MANIFESTED A GENERAL CHARITABLE INTENT.

(2) THE INSTITUTION SHALL NOTIFY THE ATTORNEY GENERAL OF THE INSTITUTION'S APPLICATION UNDER PARAGRAPH (1) OF THIS SUBSECTION, AND THE ATTORNEY GENERAL SHALL BE GIVEN AN OPPORTUNITY TO BE HEARD.

(D) IF AN INSTITUTION DETERMINES THAT A RESTRICTION CONTAINED IN A GIFT INSTRUMENT ON THE MANAGEMENT, INVESTMENT, OR PURPOSE OF AN INSTITUTIONAL FUND IS UNLAWFUL, IMPRACTICABLE, ~~IMPOSSIBLE TO ACHIEVE, OR WASTEFUL~~ OR IMPOSSIBLE TO ACHIEVE, THE INSTITUTION, 60 DAYS AFTER NOTIFICATION TO THE ATTORNEY GENERAL, MAY RELEASE OR MODIFY THE RESTRICTION, IN WHOLE OR IN PART, IF:

(1) THE INSTITUTIONAL FUND SUBJECT TO THE RESTRICTION HAS A TOTAL VALUE OF LESS THAN \$50,000;

(2) MORE THAN 20 YEARS HAVE ELAPSED SINCE THE FUND WAS ESTABLISHED; AND

**(3) THE INSTITUTION USES THE PROPERTY IN A MANNER CLEARLY CONSISTENT WITH THE CHARITABLE PURPOSES EXPRESSED IN THE GIFT INSTRUMENT.**

**15-406.**

**COMPLIANCE WITH THIS SUBTITLE SHALL BE DETERMINED IN LIGHT OF THE FACTS AND CIRCUMSTANCES EXISTING AT THE TIME A DECISION IS MADE OR ACTION IS TAKEN.**

**15-407.**

**(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THIS SUBTITLE APPLIES TO INSTITUTIONAL FUNDS EXISTING ON OR ESTABLISHED AFTER THE EFFECTIVE DATE OF CHAPTER 134 (S.B.\_\_\_\_/H.B. 200) (9LR1493/9LR0345) OF THE ACTS OF THE GENERAL ASSEMBLY OF 2009.**

**(B) AS APPLIED TO INSTITUTIONAL FUNDS EXISTING ON THE EFFECTIVE DATE OF CHAPTER 134 (S.B.\_\_\_\_/H.B. 200) (9LR1493/9LR0345) OF THE ACTS OF THE GENERAL ASSEMBLY OF 2009, THIS SUBTITLE GOVERNS ONLY DECISIONS MADE OR ACTIONS TAKEN ON OR AFTER THAT DATE.**

**15-408.**

**THIS SUBTITLE MODIFIES, LIMITS, AND SUPERSEDES THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 U.S.C. § 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE ~~§ 101~~ § 101(C) OF THAT ACT, 15 U.S.C. ~~§ 7001(A)~~ § 7001(C), OR AUTHORIZE ELECTRONIC DELIVERY OF THE NOTICES DESCRIBED IN ~~§ 103~~ § 103(B) OF THAT ACT, 15 U.S.C. § 7003(B).**

**15-409.**

**IN APPLYING AND CONSTRUING THIS SUBTITLE, WHICH IS A UNIFORM ACT, CONSIDERATION SHALL BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO THE SUBJECT MATTER OF THE LAW AMONG THE STATES THAT ENACT THE LAW.**

**15-410.**

**THIS SUBTITLE MAY BE CITED AS THE “MARYLAND UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT”.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

**Approved by the Governor, April 14, 2009.**

## **CHAPTER 405**

**(House Bill 582)**

AN ACT concerning

### **Estates and Trusts – Real and Leasehold Property – Valuation**

FOR the purpose of allowing real and leasehold property included in an estate to be valued at the contract sales price for the property under certain circumstances; making technical changes; and generally relating to valuation of real and leasehold property included in an estate.

BY repealing and reenacting, without amendments,  
Article – Estates and Trusts  
Section 7–202(a) and (b)  
Annotated Code of Maryland  
(2001 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,  
Article – Estates and Trusts  
Section 7–202(c)  
Annotated Code of Maryland  
(2001 Replacement Volume and 2008 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

### **Article – Estates and Trusts**

7–202.

(a) (1) Subject to the provisions of this section, the value of each item listed in the inventory shall be fairly appraised as of the date of death and stated in the inventory.

(2) The personal representative may appraise the corporate stocks listed on a national or regional exchange or over the counter securities and items in § 7–201(4) and (5) of this subtitle.

(3) The personal representative shall secure an independent appraisal of the items in all of the other categories.

(4) The personal representative may select one of the methods specified in this section.

(b) The personal representative may apply for appraisal by appraisers designated by the register under § 2-301(a) or § 2-302 of this article.

~~(e) (1) INSTEAD OF AN APPRAISAL OF THE FAIR MARKET VALUE, REAL AND LEASEHOLD PROPERTY MAY BE VALUED AT THE CONTRACT SALES PRICE FOR THE PROPERTY IF:~~

~~(i) THE CONTRACT SALES PRICE IS SET FORTH ON A SETTLEMENT STATEMENT FOR AN ARM'S LENGTH CONTRACT OF SALE OF THE PROPERTY; AND~~

~~(ii) THE SETTLEMENT ON THE CONTRACT OCCURS WITHIN 9 MONTHS AFTER THE DECEDENT'S DEATH.~~

~~[(1)] (2) (i) Except as provided in [paragraph (2)] SUBPARAGRAPH (II) of this [subsection] PARAGRAPH, instead of an appraisal of the fair market value, real and leasehold property may be valued at the full cash value for property tax assessment purposes as of the most recent date of finality.~~

~~[(2)] (ii) [Paragraph (1)] SUBPARAGRAPH (I) of this [subsection] PARAGRAPH does not apply to property assessed for property tax purposes on the basis of its use value.~~

(c) (1) Except as provided in paragraph (2) of this subsection, instead of an appraisal of the fair market value, real and leasehold property may be valued at:

(i) [the] THE full cash value for property tax assessment purposes as of the most recent date of finality; OR

(ii) THE CONTRACT SALES PRICE FOR THE PROPERTY IF:

1. THE CONTRACT SALES PRICE IS SET FORTH ON A SETTLEMENT STATEMENT FOR AN ARM'S LENGTH CONTRACT OF SALE OF THE PROPERTY; AND

2. THE SETTLEMENT ON THE CONTRACT OCCURS WITHIN 1 YEAR AFTER THE DECEDENT'S DEATH.

(2) Paragraph (1) of this subsection does not apply to property assessed for property tax purposes on the basis of its use value.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

**Approved by the Governor, May 7, 2009.**

## **CHAPTER 37**

**(Senate Bill 154)**

AN ACT concerning

### **Estates and Trusts – Admission of Copy of Executed Will**

FOR the purpose of authorizing an interested person to file a petition for admission of a copy of an executed will to probate under certain circumstances; providing that notice to interested persons of the filing of the petition is not required; establishing the form of a certain consent; authorizing an orphans' court to order administrative or judicial probate of a copy of a will; and generally relating to admission of a copy of an executed will to probate.

BY adding to

Article – Estates and Trusts

Section 5–801 through 5–804 to be under the new subtitle “Subtitle 8.  
Admission of Copy of Executed Will”

Annotated Code of Maryland

(2001 Replacement Volume and 2008 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

#### **Article – Estates and Trusts**

#### **SUBTITLE 8. ADMISSION OF COPY OF EXECUTED WILL.**

#### **5–801.**

(A) AN INTERESTED PERSON MAY FILE A PETITION FOR THE ADMISSION OF A COPY OF AN EXECUTED WILL IN ACCORDANCE WITH THIS SUBTITLE.

(B) NOTICE TO INTERESTED PERSONS OF THE FILING OF THE PETITION IS NOT REQUIRED.

#### **5–802.**

A PETITION FOR ADMISSION OF A COPY OF A WILL MAY BE FILED WITH THE COURT AT ANY TIME BEFORE ADMINISTRATIVE OR JUDICIAL PROBATE IF:

(1) THE ORIGINAL EXECUTED WILL IS ALLEGED TO BE LOST OR DESTROYED;

(2) A DUPLICATE REPRODUCTION OF THE ORIGINAL EXECUTED WILL, EVIDENCING A COPY OF THE ORIGINAL SIGNATURES OF THE DECEDENT AND THE WITNESSES, IS OFFERED FOR ADMISSION; AND

(3) ALL THE HEIRS AT LAW AND LEGATEES NAMED IN THE OFFERED WILL EXECUTE A CONSENT IN THE MANNER SET FORTH IN § 5-803 OF THIS SUBTITLE.

### 5-803.

THE CONSENT REQUIRED UNDER § 5-802 OF THIS SUBTITLE SHALL BE IN SUBSTANTIALLY THE FOLLOWING FORM:

#### CONSENT TO PROBATE OF COPY OF EXECUTED LAST WILL AND TESTAMENT

THE UNDERSIGNED \_\_\_\_\_ AND \_\_\_\_\_,  
BEING ALL THE HEIRS AT LAW OF THE DECEDENT AND ALL THE LEGATEES  
NAMED IN THE WILL EXECUTED BY THE DECEDENT ON \_\_\_\_\_, HEREBY  
CONSENT TO THE PROBATE OF A COPY OF THAT EXECUTED WILL, IT HAVING  
BEEN DETERMINED, AFTER AN EXTENSIVE SEARCH OF THE DECEDENT'S  
PERSONAL RECORDS, THAT AN ORIGINAL OF THE WILL CANNOT BE LOCATED.  
BY SIGNING THIS CONSENT EACH OF THE UNDERSIGNED AFFIRMS THAT IT IS  
HIS OR HER BELIEF THAT THE WILL EXECUTED BY THE DECEDENT ON \_\_\_\_\_,  
IS THE LAST VALID WILL EXECUTED BY THE DECEDENT AND WAS NOT REVOKED  
AND THAT THE COPY OF THE WILL, AS SUBMITTED WITH THE PETITION FOR ITS  
ADMISSION, REPRESENTS A TRUE AND CORRECT COPY OF THE WILL.

WE AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FACTS SET FORTH  
IN THIS CONSENT ARE TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE,  
INFORMATION, AND BELIEF.

DATE	SIGNATURE	PRINT NAME AND RELATIONSHIP
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\_\_\_\_\_  
ATTORNEY

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**ADDRESS**

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**TELEPHONE NUMBER**

**5-804.**

**THE COURT MAY:**

**(1) WITHOUT A HEARING, ISSUE AN ORDER AUTHORIZING:**

**(I) THE PETITIONER TO PROCEED WITH ADMINISTRATIVE PROBATE IN ACCORDANCE WITH SUBTITLE 3 OF THIS TITLE; AND**

**(II) THE REGISTER TO ACCEPT THE COPY OF THE WILL FOR ADMINISTRATIVE PROBATE; OR**

**(2) REQUIRE THE FILING OF JUDICIAL PROBATE IN ACCORDANCE WITH SUBTITLE 4 OF THIS TITLE.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to the estate of any decedent who died before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

**Approved by the Governor, April 14, 2009.**

## CHAPTER 202

(Senate Bill 156)

AN ACT concerning

### **Maryland Estate Tax – Filing of Returns**

FOR the purpose of requiring that a Maryland estate tax return be filed with the Comptroller or the register of wills; requiring that an amended Maryland estate tax return be filed with the Comptroller instead of with the register of wills; altering a requirement that a register of wills certify to the Comptroller the amount of inheritance tax paid for certain decedents under certain circumstances; providing for the application of this Act; and generally relating to the Maryland estate tax.

BY repealing and reenacting, with amendments,  
Article – Tax – General  
Section 7–232, 7–305, and 7–306  
Annotated Code of Maryland  
(2004 Replacement Volume and 2008 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

### **Article – Tax – General**

7–232.

Each register shall certify to the Comptroller the amount of inheritance tax paid for each decedent for whom a Maryland estate tax return is filed with the register **OR FOR WHOM THE REGISTER RECEIVES A REQUEST FOR THE CERTIFICATION FROM:**

- (1) **THE COMPTROLLER;**
- (2) **THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE; OR**
- (3) **ANY PERSON REQUIRED TO FILE A MARYLAND ESTATE TAX RETURN WITH REGARD TO PROPERTY PASSING FROM THE DECEDENT.**

7–305.

(a) If a federal estate tax return is required to be filed, the person responsible for filing the federal estate tax return shall complete, under oath, and file a Maryland estate tax return with the **COMPTROLLER OR THE** register 9 months after the date of the death of a decedent.

(b) If a federal estate tax return is not required to be filed but a federal estate tax return would be required to be filed if the applicable exclusion amount under § 2010(c) of the Internal Revenue Code were no greater than \$1,000,000, the person who would be responsible for filing the federal estate tax return shall complete, under oath, and file a Maryland estate tax return with the **COMPTROLLER OR THE** register 9 months after the date of the death of the decedent.

(c) (1) After a person files a Maryland estate tax return, the person shall file an amended Maryland estate tax return with the [register] **COMPTROLLER** if the Maryland estate tax liability is increased because of:

(i) a change in the federal gross estate, federal taxable estate, federal estate tax, or other change as determined under the Internal Revenue Code;

(ii) after-discovered property;

(iii) a correction to the value of previously reported property;

(iv) a correction to the amount of previously claimed deductions;

or

(v) any other correction to a previously filed return.

(2) **(I)** The amended return shall be filed within 90 days after the later to occur of the date of the event that caused the increase in the Maryland estate tax liability or the date on which the person required to file an amended Maryland estate tax return learned or reasonably should have learned of the increase in the Maryland estate tax liability.

**(II) ON REQUEST, EACH REGISTER SHALL CERTIFY TO THE COMPTROLLER THE AMOUNT OF INHERITANCE TAX PAID FOR EACH DECEDENT FOR WHOM AN AMENDED MARYLAND ESTATE TAX RETURN IS FILED WITH THE COMPTROLLER.**

7-306.

(a) Except as provided in § 7-307 of this subtitle, the person responsible for filing the Maryland estate tax return under § 7-305 of this subtitle shall pay the Maryland estate tax to the Comptroller no later than 9 months after the date of the death of the decedent.

(b) An extension of time to file the Maryland estate tax return granted by the Comptroller under § 7-305.1 of this subtitle does not extend the time for remitting the Maryland estate tax.

(c) If an amended Maryland estate tax return is filed pursuant to § 7-305(c) of this subtitle, the person responsible for filing the amended Maryland estate tax return shall pay the additional Maryland estate tax developed on the amended Maryland estate tax return to the Comptroller when the amended Maryland estate tax return is filed with the [register] **COMPTROLLER**.

**SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall take effect July 1, 2009, and shall be applicable to all decedents dying after December 31, 2008.

**Approved by the Governor, May 7, 2009.**

## CHAPTER 36

(Senate Bill 152)

AN ACT concerning

### **Estates and Trusts – Personal Representatives and Fiduciaries – Powers**

FOR the purpose of authorizing a personal representative to become a limited partner in any partnership or a member in any limited liability company, including a single member limited liability company; authorizing a fiduciary to continue as or become a member in any limited liability company, including a single member limited liability company; and generally relating to the powers of personal representatives and fiduciaries.

BY repealing and reenacting, with amendments,  
Article – Estates and Trusts  
Section 7–401(u) and 15–102(q)  
Annotated Code of Maryland  
(2001 Replacement Volume and 2008 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

#### **Article – Estates and Trusts**

7–401.

(u) He may convert a sole proprietorship the decedent was engaged in at the time of his death to a limited liability company **AND MAY BECOME A LIMITED PARTNER IN ANY PARTNERSHIP OR A MEMBER IN ANY LIMITED LIABILITY COMPANY, INCLUDING A SINGLE MEMBER LIMITED LIABILITY COMPANY.**

15–102.

(q) He may continue as or become a limited partner in any partnership **OR A MEMBER IN ANY LIMITED LIABILITY COMPANY, INCLUDING A SINGLE MEMBER LIMITED LIABILITY COMPANY.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

**Approved by the Governor, April 14, 2009.**

## **CHAPTER 237**

**(House Bill 583)**

AN ACT concerning

### **Crimes – Financial Exploitation of Elderly – Penalty**

FOR the purpose of prohibiting a person from knowingly and willfully obtaining by deception, intimidation, or undue influence the property of an individual that the person knows or reasonably should know is of at least a certain age, with intent to deprive the individual of the individual's property; altering a certain definition of "undue influence" to include the exercise, under certain circumstances, of certain dominion and influence over an individual of at least a certain age; applying certain penalties; making conforming changes; and generally relating to the financial exploitation of the elderly.

BY repealing and reenacting, with amendments,

Article – Criminal Law

Section 8–801

Annotated Code of Maryland

(2002 Volume and 2008 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

#### **Article – Criminal Law**

8–801.

(a) (1) In this section the following words have the meanings indicated.

(2) "Deception" has the meaning stated in § 7–101 of this article.

(3) "Deprive" has the meaning stated in § 7–101 of this article.

(4) "Obtain" has the meaning stated in § 7–101 of this article.

(5) "Property" has the meaning stated in § 7–101 of this article.

(6) "Value" has the meaning stated in § 7–103 of this article.

(7) (i) "Undue influence" means domination and influence amounting to force and coercion exercised by another person to such an extent that a

vulnerable adult **OR AN INDIVIDUAL AT LEAST 68 YEARS OLD** was prevented from exercising free judgment and choice.

(ii) "Undue influence" does not include the normal influence that one member of a family has over another member of the family.

(8) "Vulnerable adult" has the meaning stated in § 3-604 of this article.

(b) (1) A person may not knowingly and willfully obtain by deception, intimidation, or undue influence the property of an individual that the person knows or reasonably should know is a vulnerable adult with intent to deprive the vulnerable adult of the vulnerable adult's property.

**(2) A PERSON MAY NOT KNOWINGLY AND WILLFULLY OBTAIN BY DECEPTION, INTIMIDATION, OR UNDUE INFLUENCE THE PROPERTY OF AN INDIVIDUAL THAT THE PERSON KNOWS OR REASONABLY SHOULD KNOW IS AT LEAST 68 YEARS OLD, WITH INTENT TO DEPRIVE THE INDIVIDUAL OF THE INDIVIDUAL'S PROPERTY.**

(c) (1) A person convicted of a violation of this section when the value of the property is \$500 or more is guilty of a felony and:

(i) is subject to imprisonment not exceeding 15 years or a fine not exceeding \$10,000 or both; and

(ii) shall restore the property taken or its value to the owner, or, if the owner is deceased, restore the property or its value to the owner's estate.

(2) A person convicted of a violation of this section when the value of the property is less than \$500 is guilty of a misdemeanor and:

(i) is subject to imprisonment not exceeding 18 months or a fine not exceeding \$500 or both; and

(ii) shall restore the property taken or its value to the owner, or, if the owner is deceased, restore the property or its value to the owner's estate.

(d) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for any crime based on the act or acts establishing the violation of this section.

(e) A conviction under this section shall disqualify the defendant from inheriting, taking, enjoying, receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the [vulnerable adult] **VICTIM OF THE OFFENSE,**

whether by operation of law or pursuant to a legal document executed or entered into by the [vulnerable adult] **VICTIM** before the defendant shall have been convicted under this section and shall have made full restoration of the property taken or of its value to the [vulnerable adult] **VICTIM**.

(f) This section may not be construed to impose criminal liability on a person who, at the request of the [vulnerable adult] **VICTIM OF THE OFFENSE**, the [vulnerable adult's] **VICTIM'S** family, or the court appointed guardian of the [vulnerable adult] **VICTIM**, has made a good faith effort to assist the [vulnerable adult] **VICTIM** in the management of or transfer of the [vulnerable adult's] **VICTIM'S** property.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

**Approved by the Governor, May 7, 2009.**

## CHAPTER 602

(Senate Bill 785)

AN ACT concerning

### **Inheritance Tax – Exemption – Domestic Partners**

FOR the purpose of providing an exemption from the inheritance tax for certain property that passes from a decedent to or for the use of a domestic partner of a decedent under certain circumstances; defining certain terms; providing for the application of this Act; and generally relating to an exemption from the inheritance tax for certain property that passes from a decedent to or for the use of a domestic partner of a decedent.

BY adding to

Article – Tax – General

Section 7-203(l)

Annotated Code of Maryland

(2004 Replacement Volume and 2008 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

#### **Article – Tax – General**

7-203.

(L) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(II) “DOMESTIC PARTNER” MEANS AN INDIVIDUAL WITH WHOM ANOTHER INDIVIDUAL HAS ESTABLISHED A DOMESTIC PARTNERSHIP.

(III) “DOMESTIC PARTNERSHIP” MEANS A RELATIONSHIP BETWEEN TWO INDIVIDUALS ~~OF THE SAME SEX~~ THAT IS A DOMESTIC PARTNERSHIP WITHIN THE MEANING OF § 6-101 OF THE HEALTH – GENERAL ARTICLE.

(2) IF THE DOMESTIC PARTNER OF A DECEDENT PROVIDES EVIDENCE OF THE DOMESTIC PARTNERSHIP AS DESCRIBED IN § 6-101(B) OF THE HEALTH – GENERAL ARTICLE, THE INHERITANCE TAX DOES NOT APPLY TO THE RECEIPT OF AN INTEREST IN A JOINT PRIMARY RESIDENCE THAT:

**(I) AT THE TIME OF DEATH WAS HELD IN JOINT TENANCY  
BY THE DECEDENT AND THE DOMESTIC PARTNER; AND**

**(II) PASSES FROM THE DECEDENT TO OR FOR THE USE OF  
THE DOMESTIC PARTNER.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2009, and shall be applicable to all decedents dying on or after July 1, 2009.

**Approved by the Governor, May 19, 2009.**

## **CHAPTER 514**

**(Senate Bill 153)**

AN ACT concerning

### **Estates and Trusts – Jurisdiction of Orphans’ Court – Determination of Title to Personal Property**

FOR the purpose of altering the maximum value of personal property for which an orphans’ court is authorized to determine questions of title for a certain purpose; providing for the application of this Act; and generally relating to the estates of decedents.

BY repealing and reenacting, with amendments,  
Article – Estates and Trusts  
Section 1–301  
Annotated Code of Maryland  
(2001 Replacement Volume and 2008 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

#### **Article – Estates and Trusts**

1–301.

(a) All property of a decedent shall be subject to the estates of decedents law, and upon the person’s death shall pass directly to the personal representative, who shall hold the legal title for administration and distribution, without any distinction, preference, or priority as between real and personal property.

(b) The court may determine questions of title to personal property not exceeding [\$20,000] **\$50,000** in value for the purpose of determining what personal property is properly includable in an estate that is the subject of a proceeding before the court.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any probate proceeding commenced before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

Ch. 514

MARTIN O'MALLEY, Governor

**Approved by the Governor, May 19, 2009.**

## CHAPTER 749

(House Bill 634)

AN ACT concerning

### **Orphans' Court – Minors – Guardianship of Person**

FOR the purpose of providing that an orphans' court may exercise jurisdiction over the guardianship of the person of a minor regardless of whether the minor has property, may inherit property, or is destitute under certain circumstances; providing that an orphans' court may transfer a certain matter to a circuit court under certain circumstances; providing that an orphans' court may waive certain costs; providing for the application of this Act; and generally relating to the jurisdiction of an orphans' court concerning the guardianship of the person of a minor.

BY repealing and reenacting, with amendments,  
Article – Estates and Trusts  
Section 13–105  
Annotated Code of Maryland  
(2001 Replacement Volume and 2008 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

#### **Article – Estates and Trusts**

13–105.

(a) (1) The orphans' courts and the circuit courts have concurrent jurisdiction over guardians of the person of a minor and over protective proceedings for minors.

(2) Upon petition of an interested person, a matter initiated in the orphans' court may be transferred to the circuit court.

(b) The circuit courts have exclusive jurisdiction over protective proceedings for disabled persons.

(c) (1) **AN ORPHANS' COURT MAY EXERCISE JURISDICTION OVER GUARDIANSHIP OF THE PERSON OF A MINOR IF THE PRESIDING JUDGE OF THE ORPHANS' COURT IS A MEMBER OF THE BAR, REGARDLESS OF WHETHER THE MINOR WHO IS THE SUBJECT OF THE PETITION FOR GUARDIANSHIP OF THE PERSON HAS PROPERTY, MAY INHERIT PROPERTY, OR IS DESTITUTE.**

**(2) AN ORPHANS' COURT THAT EXERCISES JURISDICTION OR IS REQUESTED TO EXERCISE JURISDICTION UNDER THIS SUBSECTION MAY:**

**(I) TRANSFER THE MATTER TO THE CIRCUIT COURT ON A FINDING THAT THE BEST INTERESTS OF THE CHILD REQUIRE UTILIZATION OF THE EQUITABLE POWERS OF THE CIRCUIT COURT; AND**

**(II) WAIVE THE COSTS, IF ANY, OF A TRANSFER UNDER THIS PARAGRAPH.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any petition for guardianship of the person of a minor filed before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

**Approved by the Governor, May 19, 2009.**